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July 28, 1998

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

***DONALD RILEY V. NATIONAL MARINE FISHERIES, ET AL.***  
**UNITED STATES DISTRICT COURT CASE NO. 98-CV-6421IEG**

The United States District Court denied a preliminary injunction and dismissed the lawsuit filed by Donald Riley against The City of San Diego concerning the harbor seals at the Children's Pool.

The plaintiff, Mr. Riley, filed a lawsuit against National Marine Fisheries and The City of San Diego. The lawsuit claimed that the city had violated the federal Marine Mammal Protection Act [MMPA] for not taking steps to protect the harbor seals at the Children's Pool. The plaintiff sought to protect the seals from the public who approached them on the beach. The plaintiff requested the court take several actions including a request to declare the beach at the Children's Pool to be a refuge and a request to establish boundaries to prohibit public access.

At the preliminary injunction hearing, the court dismissed the complaint on the grounds that the plaintiff failed to show that the court had jurisdiction of the case. In addition, the court found that the plaintiff could not maintain his lawsuit because enforcement of the provisions of the MMPA is the responsibility of the Secretary of Commerce only, and does not provide for a private right of action by citizens. The case was handled by Deputy City Attorney Carra L. Lassman.

Respectfully submitted,

**CASEY GWINN**  
City Attorney

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Attachment  
RC-98-15